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Attorneys for Defendants
 Access Limousines & Coaches, Inc.; and
 Maurice Maalouly

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

Aryan Enterprises, Inc., et al.)	CV 10-3279 PA (JCx)
)	
Plaintiffs,)	ALCI'S F.R.CIV.P. RULE 11 MOTION
)	FOR SANCTIONS AGAINST PLAINTIFFS
v.)	AND PLAINTIFFS' COUNSEL
)	
Access Limousines & Coaches, Inc.; et. al.,)	March 28, 2011
)	1:30 p.m.
Defendants.)	
)	Honorable Percy Anderson

In accordance with F.R.Civ.P. Rule 11, Defendant /
 Counterclaimant Access Limousines & Coaches, Inc. ("ALCI") hereby
 moves this Court for sanctions against Plaintiffs / Counterclaim
 Defendants Aryan Enterprises, Inc. and James Bond (hereafter
 collectively "Plaintiffs"), and against Plaintiffs' counsel THE
 DAUGHETEE LAW FIRM and Renee Daughetee (hereafter collectively
 "Plaintiffs' counsel").

Introduction

F.R.Civ.P. Rule 11 states in relevant part that by filing a
 pleading, the attorney certifies to the best of her knowledge,
 information, and belief, formed after an inquiry reasonable under

1 the circumstances, that "(2) the ... defenses ... are warranted
2 by existing law or by a nonfrivolous argument for extending,
3 modifying, or reversing existing law or for establishing new law"
4 and that "(4) the denials of factual contentions are warranted on
5 the evidence or, if specifically so identified, are reasonably
6 based on belief or a lack of information."

7 In the present case, Plaintiffs filed a Reply to ALCI's
8 Counterclaim.¹ In the Reply, Plaintiffs denied factual
9 allegations pleaded by Plaintiffs themselves in Plaintiffs'
10 Complaint, and also pleaded affirmative defenses that are not
11 warranted by existing law or by a non-frivolous argument for
12 extending, modifying, or reversing existing law or for
13 establishing new law.

14 Accordingly, as more fully set forth below, ALCI requests
15 sanctions requiring Plaintiffs to: 1) pay ALCI's attorney's fees
16 associated with the present motion; and 2) file an amended Reply
17 admitting the aforementioned factual allegations and removing the
18 aforementioned affirmative defenses.

19 Plaintiff's Denial of Factual Allegations

20 ALCI alleges in paragraphs 139-140 of its counterclaim that
21 Plaintiffs reside in this District. *Declaration of Sean R.*
22 *Ferron In Support of ALCI'S Motion Pursuant to F.R.CIV.P. Rule 11*
23 *for Sanctions Against Plaintiffs and Plaintiffs' Counsel* (filed
24
25

26 ¹ Plaintiffs' Reply, D.E. 26, was captioned "PLAINTIFFS' VERIFIED
27 RESPONSE TO DEFENDANTS COUNTER-CLAIM."
28

herewith, hereafter "*Decl. SRFerron*"), ¶ 1, Exh. 1.

Specifically, the counterclaim alleges:

"139. Plaintiff, Aryan Enterprises, Inc., dba Access Limousine, is a California corporation residing in this district.

140. Plaintiff, James Bond, is an individual residing in this district."

Decl. SRFerron, ¶ 1, Exh. 1. In Plaintiffs' Reply, Plaintiffs deny these factual allegations. *Decl. SRFerron*, ¶ 2, Exh. 2. Yet Plaintiffs pleaded these very same allegations in paragraphs 5-6 of Plaintiffs' Complaint. *Decl. SRFerron*, ¶ 3, Exh. 3. Plaintiffs' denial of these allegations thus are not warranted on the evidence. Nor have Plaintiffs specifically identified such denials as being reasonably based on belief or a lack of information. As such, the denials violate Rule 11.

Plaintiff's Assertion of Affirmative Defenses

ALCI has pled only a single counterclaim, namely a counterclaim for Reassignment Or Cancellation of U.S. Trademark Registration No. 3,725,114 Pursuant to 15 U.S.C. § 1119. *Decl. SRFerron*, ¶ 1, Exh. 1. The counterclaim is based on ALCI's assertion that ALCI is the true owner of the trademark registration being asserted by Plaintiffs.

Plaintiffs have pled numerous affirmative defenses to ALCI's counterclaim. *Decl. SRFerron*, ¶ 2, Exh. 2. Most, if not all, of the defenses are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, including at least

1 affirmative defenses 2, 9, 11-17, 19-20, and 22.² Plaintiffs'
2 aforementioned affirmative defenses thus violate Rule 11 for at
3 least the reasons set forth below.

4 Defense 2: Statute of Limitations

5 The minimum statute of limitations to cancel a federal
6 trademark registration is five years after the date of
7 registration. 15 U.S.C. § 1064(1). The registration at issue
8 (Reg. No. 3,725,114) was registered December 15, 2009, as alleged
9 by Plaintiffs in paragraph 14 of Plaintiffs' Complaint. Decl.
10 *SRFerron*, ¶ 3, Exh. 3. Asserting this defense therefore violates
11 Rule 11.

12 Defenses 9, 11-16, 20, and 22:

13 Defenses 9, 11-16, 20, and 22 appear to be boilerplate
14 defenses to claims for breach of contract or personal injury.
15 They are not applicable to the counterclaim at issue, which is to
16 cancel or reassign a U.S. trademark registration pursuant to 35
17 U.S.C. § 1119. The defenses are identified below, with a brief
18 statement as to why their assertion violates Rule 11.

19 9. (Lack of Consideration) - There is no requirement for any
20 consideration by a party to obtain ownership through 35 U.S.C. §
21 1119 of a trademark registration.

22 11. (Failure to Complete Required Conditions) - There is no
23 requirement for any conditions to be completed by a party to
24

25 ² By not including other affirmative defenses in this list, ALCI
26 does not admit or imply that Plaintiffs have any facts to support
27 them.

1 obtain ownership through 35 U.S.C. § 1119 of a trademark
2 registration.

3 12. (Liability Contractually Assumed By Others) - No other
4 party can contractually assume liability for Plaintiffs as to
5 Plaintiffs transferring ownership of a trademark registration.

6 13. (Setoff) - There are no damages alleged by ALCI. There
7 can be no setoff. ALCI is seeking to obtain ownership of a U.S.
8 trademark registration.

9 14. (Discharge of Obligation) - There are no contractual
10 obligations being asserted against Plaintiffs.

11 15. (Discharge of Liability) - There are no contractual
12 obligations being asserted against Plaintiffs, and no monetary
13 damages being sought against Plaintiffs.

14 16. (Modification of Contract) - There is no contract at
15 issue in the present action.

16 20. (Other Party's Fault) - There is no basis for this
17 defense, since the counterclaim seeks reassignment or
18 cancellation of a U.S. trademark registration registered in the
19 name of one of the Plaintiffs, as pleaded by Plaintiffs in
20 paragraph 14 of Plaintiffs' Complaint. *Decl. SRFerron*, ¶ 3, Exh.
21 3.

22 22. (Statute of Frauds) - The Statute of Frauds (Cal. Civ.
23 Code § 1624) applies to contracts, not to 35 U.S.C. § 1119.

24 Defense 17: Defense Costs

25 In this defense, Plaintiffs allege the counterclaim "was
26 brought without reasonable care and without a good faith belief
27 that there was a justifiable controversy under the facts and the

1 law..." Decl. SRFerron, ¶ 2, Exh. 2. However, the controversy
2 is well-pled on its face in the counterclaim, namely that the
3 true owner of the U.S. trademark registration at issue is owned
4 by ALCI, not by Plaintiff Aryan Enterprises, Inc. Decl.
5 SRFerron, ¶ 1. Exh. 1.

6 Defense 19: Failure to Name Indispensible Parties

7 In this defense, Plaintiffs allege the counterclaim fails to
8 name "all necessary, indispensable, and proper parties." yet the
9 counterclaim names the current record owner of the trademark
10 registration at issue, and is brought by the alleged true owner
11 of the trademark registration at issue. There cannot be any
12 other indispensable parties.

13 Sanctions Being Sought

14 ALCI initially contacted Plaintiffs' counsel by email,
15 informally requesting the offending pleading be corrected. Decl.
16 SRFerron, ¶ 4, Exh. 4. Plaintiffs' counsel did not reply to the
17 email. Decl. SRFerron, ¶ 4. ALCI thus prepared and served the
18 present motion on Plaintiffs on January 5, 2011, to formally
19 satisfy the Rule 11 safe harbor requirement. Decl. SRFerron, ¶
20 5. ALCI is now seeking sanctions as set forth in the proposed
21 Order submitted herewith, which in summary are stated below.
22 Moreover, Plaintiffs have not responded to any discovery in this
23 matter and Defendants have a Motion to Compel pending (D.E. 29)
24 that is scheduled to be heard on February 1, 2011.

25 1) Plaintiffs and Plaintiffs' counsel should pay ALCI's
26 attorney's fees associated with the present motion, subject to
27 proof upon declaration by ALCI's counsel, and subject to
28

1 Plaintiffs and Plaintiffs' counsel having an opportunity to reply
2 (to date the fees are \$1,370.50 (*Decl. SRFerron*, ¶ 6)). Plaintiff
3 should be held liable, because the Reply was purportedly a
4 "verified" reply. *Decl. SRFerron*, ¶ 2, Exh. 2.

5 2) Plaintiffs should be required to file an amended Reply
6 admitting the aforementioned factual allegations (paragraphs 139-
7 140) and removing the aforementioned affirmative defenses (2, 9,
8 11-17, 19-20 and 22).

9 These sanctions are appropriate, and there are no
10 exceptional circumstances to prevent THE DAUGHETEE LAW FIRM from
11 being jointly responsible. Further, these sanctions are limited
12 to what suffices to deter repetition of the conduct or comparable
13 conduct by others similarly situated.

14 Respectfully submitted,

15 February 22, 2011
16 Date

/s/ Sean R. Ferron

L/O Adrienne D. Cohen
Sean R. Ferron
Attorneys for Defendants
ALCI and Maalouly

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I served the foregoing document described as **ALCI'S F.R.CIV.P. RULE 11 MOTION FOR SANCTIONS AGAINST PLAINTIFFS AND PLAINTIFFS' COUNSEL** to all parties to this action as set forth below, on the date set forth below, in the manner(s) checked below.

- ☒ By the Court's ECF system.
- ☐ By mail service to their attorney(s) of record, at the address(es) set forth below.
- ☐ By e-mail service to their attorney(s) of record, at the following email address(es) set forth below.
- ☐ By fax service to their attorney(s) of record, at the fax number(s) set forth below.

Counsel for Aryan Enterprises; James Bond

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Executed February 22, 2011, Santa Ana, California.

/s/ Sean R. Ferron
Sean R. Ferron